Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	File No. ISP-92-007

REPLY COMMENTS OF HUGHES ELECTRONICS CORPORATION

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HUGHES ELECTRONICS CORPORATION

Hughes Electronics Corporation ("HE") submits these Reply Comments on behalf of itself and its subsidiaries and affiliates DIRECTV, Inc., DIRECTV International, Inc., Galaxy Latin America, L.L.C., Hughes Communications, Inc., Hughes Space and Communications Company, and Hughes Telecommunications and Space Company (collectively, with HE,

"Hughes") in response to the comments filed in the above-captioned proceeding.[1] As the opening comments show, the commenters unanimously agree with Hughes that the Commission should not apply its effective competitive opportunities test to WTO member-licensed satellites seeking to provide covered services to the U.S. Many commenters also agree with Hughes that, in implementing policies for evaluating the entry of foreign-licensed satellites from both WTO and non-WTO member countries, the Commission should ensure that it does not adopt requirements that inadvertently impede the further development of U.S. and global competition. For the reasons set forth below, with the modifications that Hughes has suggested to protect against such a result, the Commission's proposed foreign satellite entry policy will increase competition in the provision of satellite services, facilitate the widest possible range of satellite service options for U.S. consumers, and encourage both WTO and non-WTO member countries alike to pursue procompetitive satellite regulatory policies.

INTRODUCTION AND SUMMARY

In its initial comments, Hughes demonstrated that the Commission's proposal not to apply an ECO-Sat test to satellites that are licensed by WTO member countries and provide covered services would fulfill the U.S. commitments under the WTO Agreement. Hughes also generally supported the Commission's proposal to apply a flexible version of the ECO-Sat test with respect to non-WTO member countries and non-covered services (such as DTH and DBS services), while urging the Commission to ensure that its ECO-Sat test does not effectively become a reciprocity test. Hughes expressed concern, however, that, in refining the procedures

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[1] Another HE subsidiary, PanAmSat Corporation, is filing separate reply comments in this proceeding.

and requirements applicable to foreign-licensed satellites, the Commission should ensure that those requirements are WTO-consistent and do not, by imposing overly burdensome requirements on foreign-licensed satellites, give foreign administrations a justification for imposing additional burdens on U.S. licensees seeking to compete abroad.

The opening comments filed by other parties in this proceeding reflect virtually unanimous support for Hughes' position. Every commenter that addressed the issue has urged the Commission to adopt its proposal not to apply an ECO-Sat test to WTO member satellites providing covered services, but to apply some form of such a test to non-WTO member satellites and non-covered services. Indeed, the only substantial disagreement on any aspect of the Commission's proposed foreign satellite entry framework comes from two operators -- Loral and TRW -- that urge the Commission to circumvent the U.S. WTO commitments by barring ICO Global Communications Corporation ("ICO"), one of their mobile satellite services ("MSS") competitors, from the U.S. Aside from that competitive squabble, the record is clear that the Commission should proceed to adopt its proposed framework for the entry of foreign-licensed satellites, with the minor modifications suggested below.

I. THE COMMENTS OVERWHELMINGLY SUPPORT THE COMMISSION'S PROPOSALS TO ENHANCE COMPETITION IN THE PROVISION OF SATELLITE SERVICES THROUGH ENTRY OF NON-U.S.-LICENSED SATELLITES.

The commenters unanimously agree with Hughes that the Commission should not apply an ECO-Sat test to satellites licensed by WTO member countries that seek to provide

covered services to the U.S.[2] As Hughes noted and other commenters recognized, the WTO Agreement requires the United States to afford non-U.S.-licensed satellites the same access to the U.S. as U.S.-licensed satellites enjoy.[3] Conditioning entry into the United States on the fulfillment of an ECO-Sat test would directly violate U.S. WTO commitments by imposing an entry barrier on foreign-licensed satellites that is not also imposed on U.S.-licensed satellites. Absent a showing of a very high risk to competition,[4] the Commission should not -- indeed, cannot -- deny or condition access by a WTO-member licensed satellite on the basis of an ECO-Sat or other entry test.

Similarly, the commenters agree with Hughes that the Commission should not apply an ECO-Sat test to non-WTO member route markets served by satellites licensed by WTO-member countries. As the Commission, Hughes, and many commenters have made clear,[5] as long as the Commission's DISCO I policy permits U.S.-licensed satellites to provide international services to non-WTO member route countries without obtaining further

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2 See, e.g., Comments of Qualcomm Incorporated at 2-4 ("Qualcomm Comments"); Comments of GE American Communications, Inc. at 3-4 ("GE Americom Comments"); Comments of ICO Global Communications at 4 ("ICO Comments").

3 ICO Comments at 4; Comments of PanAmSat Corporation at 2 ("PanAmSat Comments"); Comments of Orion Network Systems, Inc. in Response to Further Notice of Propose Rulemaking at 4 ("Orion Comments").

4 Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, IB Docket No. 96-111, FCC 97-252, at ¶ 18 (rel. July 18, 1997) ("Further Notice").

5 Further Notice at ¶ 26; Comments of Hughes Electronics Corporation at 8-9 ("Hughes Comments"); Qualcomm Comments at 4; PanAmSat Comments at 5.

Commission authorization,[6] and unless the licensing administration is an "administration of convenience,"[7] the U.S. WTO commitments require the Commission to afford foreign-licensed satellites providing covered services the same opportunity. For this reason, there is no support for Columbia's proposal to apply an ECO-Sat test to non-WTO member route markets if an entity controlling the foreign-licensed satellite is from such a route market.[8] Rather, to the extent the Commission is concerned about the competitiveness of route markets, the commenters agree with the Commission's proposal to address those concerns by prohibiting exclusionary agreements between foreign-licensed satellites and the licensing administration or dominant earth station operators within the route market.[9]

There is no basis for applying a different rule to ICO, despite the claims to the contrary of Loral and TRW, two of ICO's competitors.[10] Loral urges the Commission to conduct a separate, lengthy proceeding to determine ICO's regulatory status, and TRW similarly contends

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6 See Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order, 11 FCC Rcd 2434 (1996) ("DISCO I").

7 Amendment of the Commission's Regulatory Polices to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, IB Docket No. 96-111, at ¶ 26 (rel. May 14, 1996) ("DISCO II NPRM"); Amendment of the Commission's Regulatory Polices to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, Consolidated Comments of DIRECTV, Inc., DIRECTV International, Inc. and Hughes Communications Galaxy, Inc. at 12 (filed July 15, 1996).

8 Comments of Columbia Communications Corporation at 4-5.

9 Further Notice at ¶ 27; See Hughes Comments at 9; Qualcomm Comments at 4; GE Americom Comments at 4.

10 See Joint Comments of Loral Space & Communications, Ltd. and L/Q Licensee at 7 ("Loral Comments"). Interestingly, while Airtouch and Qualcomm, Loral's partners in Globalstar, each filed comments in this proceeding, neither appears to agree with Loral in urging the Commission to exempt ICO from the open policy that the U.S. WTO commitments require.

that the Commission should treat ICO no differently than a future IGO affiliate.[11] But both competitors overlook the fact that ICO is an existing entity that is licensed by the United Kingdom -- a WTO-member country -- and that seeks to provide MSS services that are covered by the U.S. WTO commitments. But even if those facts were not conclusive of the regulatory standard applicable to ICO's U.S. entry (and they clearly are), there can be no serious dispute as to whether the U.S. Trade Representative intended to exclude ICO from the scope of the U.S. commitments. Contrary to what Loral and TRW would have the Commission believe, there is no suggestion whatsoever that the U.S. Trade Representative ever intended to do so. Indeed, while the U.S. Trade Representative raised concerns during the WTO discussions about the entry of future IGO affiliates, such as INC and other Intelsat and Inmarsat affiliates whose structure remains undecided, no mention whatsoever was made of excluding ICO -- an existing entity wholly separate from Inmarsat whose identity and plans have long since been known and who has actively participated in MSS proceedings in the U.S. -- from the open entry required under the U.S. WTO commitments. Plainly, the U.S. WTO commitments require the Commission to reject Loral's and TRW's blatantly anticompetitive and self-serving efforts and to treat ICO just like any other MSS provider licensed by a WTO-member country.

U.S. treaty commitments also require the Commission to allow streamlined entry of satellites providing services covered under a bilateral agreement, as Hughes noted in its comments.[12] After all, under the Supremacy Clause of the Constitution, those bilateral agreements supersede the Commission's rules and policies. Moreover, as Hughes and other

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[11] Loral Comments at 17-18; Comments of TRW, Inc. at 6-7.

[12] Hughes Comments at 15-16.

commenters have noted, bilateral agreements serve a pro-competitive purpose by opening foreign markets to U.S.-licensed satellites and permitting foreign-licensed satellites to offer new services to U.S. consumers.[13] Indeed, such an agreement between the U.S. and Mexico already has enabled Galaxy Latin America, together with its Mexican partner, to provide DTH service to Mexico, and the FCC has authorized a Mexican operator to compete in the provision of DTH services to the U.S.[14] Plainly, the Commission should not, and cannot, apply an ECO-Sat test to satellites and services separately covered under an existing bilateral agreement.

Where a satellite service is not covered by either a bilateral agreement or the WTO Agreement, however, virtually every commenter agrees with Hughes that the Commission may apply some form of entry test to the home and route markets of satellites licensed by non-WTO member countries or providing non-covered services.[15] None of the parties disputes Hughes' proposal that the Commission should modify its original ECO-Sat test to make that test more consistent with its traditional "open skies" policy. Nor do any parties deny that a strict reciprocity test will undermine the Commission's goal of opening foreign markets to competition if foreign administrations impose equally rigid reciprocity tests to evaluate the entry of U.S.-licensed satellites.[16] Indeed, in the short time since the Commission first proposed the ECO-Sat test, Argentina already has effectively precluded U.S.-licensed satellites from providing service there, on the express ground that it construed the ECO-Sat test as requiring strict reciprocity. To

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[13] Id. at 15-16; Qualcomm Comments at 6, GE Americom Comments at 4.

[14] See Televisa International, L.L.C., Order and Authorization, FCC File No. 330-DSE-L-97, DA-1758 (released Aug. 18, 1997).

[15] Hughes Comments at 11-12; Qualcomm Comments at 5; GE Americom Comments at 5; Orion Comments at 5.

[16] Hughes Comments at 14-15.

help avoid repetition of the Argentine experience in other countries, the Commission should ensure that its entry test is applied flexibly, consistent with Hughes' earlier comments in this proceeding. In the end, the ECO-Sat test should bar entry only in those egregious cases where a foreign administration imposes significant protectionist barriers against U.S.-licensed satellites.

Finally, the commenters generally agree with Hughes that the Commission continues to have authority to consider public interest factors in evaluating authorization requests from foreign satellites licensed by WTO and non-WTO member countries.[17] Hughes also agrees with those commenters that have expressed concern that the Commission not allow its public interest analysis to become a "back door" justification for excluding satellites licensed by WTO-member countries.[18] It has long been clear that the proper focus of the Commission's public interest analysis is interference and competition-related issues that traditionally have been within the Commission's jurisdiction and expertise. The Commission should consider additional issues such as national security, law enforcement, and trade policy only at the behest of the Executive Branch, which has primary authority over these matters.[19] In short, the Commission should ensure that its public interest analysis is appropriately limited and does not effectively result in the imposition of additional competitive barriers on foreign licensees seeking to compete in the U.S.

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[17] Hughes Comments at 10-11; GE Americom Comments at 3; PanAmSat Comments at 3.

[18] ICO Comments at 10; Supplemental Comments of Telesat Canada at 3.

[19] See Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as Amended, 11 FCC Rcd 1850, 1865 (1996); Market Entry and Regulation of Foreign Affiliated Entities, 11 FCC Rcd 3873, 3897 (1995); American Telephone & Telegraph Company, 89 F.C.C.2d 1167 (1982).

II. THE COMMISSION SHOULD NOT IMPOSE UNDUE BURDENS ON FOREIGN-LICENSED SATELLITES SEEKING TO SERVE THE UNITED STATES.

Several commenters join Hughes in urging the Commission to apply to foreign-licensed satellites only those rules and information filing requirements that are designed to prevent harmful interference among satellite systems.[20] Some commenters, however, urge the Commission to require foreign-licensed satellites to adhere to all of the same rules and submit all of the same information as U.S.-licensed satellites.[21] In considering requests by foreign-licensed satellites to serve the United States, it is critical that the Commission not, in effect, engage in the relicensing of foreign satellites.[22] Rather, the Commission should exempt foreign-licensed satellites from rules and filing requirements except for those relating to spectrum coordination.

Many commenters agree that the imposition of burdensome filing requirements could have a detrimental impact on competition.[23] First, since foreign-licensed satellites seeking to serve the U.S. generally already will be subject to the rules of their licensing administration, imposing every Commission requirement on foreign-licensed satellites as well could subject them to duplicative and possibly conflicting standards, as the Commission has noted.[24] Second, the Commission requires U.S. space station applicants to submit detailed qualification information that, for foreign-licensed satellites, is properly within the jurisdiction of the satellites' licensing administration. Moreover, the benefits to the Commission of having foreign-

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[20] Comments of Comsat Corporation at 20-21 ("Comsat Comments"); ICO Comments at 16-18.

[21] Motorola Comments at 6-7; GE Americom Comments at 9.

[22] Hughes Comments at 19.

[23] See, e.g., Comsat Comments at 21; ICO Comments at 16-18.

[24] See DISCO II NPRM at ¶ 14.

licensed satellites submit this information to it are far outweighed by the burdens placed on the foreign-licensed satellites seeking entry and on the Commission itself. Imposing these extra burdens on foreign-licensed satellites could have the effect of deterring such satellites from seeking to serve the U.S., thereby depriving U.S. consumers of the benefits of additional competition.

More importantly, however, blanket imposition of every Commission rule and information filing requirement on foreign-licensed satellites, without regard for the purpose served thereby, may lead foreign administrations to impose additional regulatory burdens on U.S.-licensed satellites seeking to provide service abroad.[25] As the Argentine example shows, foreign administrations often follow the Commission's example in establishing their own satellite regulatory policies. If the Commission were to impose its full regulatory framework on foreign-licensed satellites, foreign administrations may well follow the Commission's lead and impose cumbersome regulatory requirements on U.S.-licensed satellites serving their countries. The cumulative effect of multiple administrations imposing significant obligations on satellite service providers could severely complicate the ability of U.S. operators to compete abroad and effectively stifle competition in the provision of international satellite services.[26] Thus, Hughes urges the Commission to impose the least burdensome requirements on foreign-licensed satellites consistent with the Commission's general responsibility under the Communications Act to

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[25] Hughes Comments at 20; Comsat Comments at 21.

[26] For the same reason, the Commission should proceed cautiously in imposing obligations on foreign licensees such as paying for the relocation costs of incumbent licensees. See Loral Comments at 24-27.

manage the radio frequency spectrum. In the end, the Commission should apply only those rules and procedures that seek to prevent harmful interference among satellite systems.

III. THE COMMISSION SHOULD CONTINUE TO REGULATE RECEIVE-ONLY EARTH STATIONS OPERATING WITH NON-U.S.-LICENSED SATELLITES.

A few commenters have requested that the Commission exempt from its licensing requirements receive-only earth stations that operate with non-U.S.-licensed satellite systems.[27] As Hughes previously stated, deregulation of receive-only earth stations operating with non-U.S. licensed satellites is impractical, because licensing of earth stations is necessary to prevent harmful interference from foreign-licensed satellites that otherwise would not be subject to any Commission regulation or oversight. As the Commission explained, licensing receive-only earth stations is the only way "to ensure that . . . radio communications, conducted within the United States, are consistent with U.S. policy concerning competition and spectrum management."[28] While the threat of license revocation provides the means by which the Commission can prevent harmful interference by U.S.-licensed space stations, the Commission has no recourse against a foreign-licensed satellite. Consequently, the Commission should license receive-only earth stations operating with foreign-licensed satellites to ensure that the satellites do not cause harmful interference to other satellite providers.

CONCLUSION

For the foregoing reasons and the reasons set forth in Hughes' opening comments and in its prior comments in this proceeding, the Commission should (i) adopt its proposal not to apply an ECO-Sat test to satellites licensed by WTO member countries to provide services

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[27] Loral Comments at 32; Comments of Globalcast North America Incorporated at 4-5.

[28] DISCO II NPRM at ¶ 77.

covered by the WTO Agreement; (ii) apply a flexible ECO-Sat test to non-WTO member countries and non-covered services; (iii) ensure that Commission procedures do not impose unduly burdensome regulatory requirements on foreign-licensed satellites; and (iv) continue to regulate receive-only earth stations operating with non-U.S.-licensed satellites..

Respectfully submitted,

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September 5, 1997

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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of September, 1997, caused copies of the foregoing "Reply Comments of Hughes Electronics Corporation" to be served by first-class mail, postage prepaid (*by hand delivery), on the following:

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